
**Consumer Protection & Business
Committee**

HB 1051

Brief Description: Concerning robocalling and telephone scams.

Sponsors: Representatives Leavitt, Walen, Simmons, Ryu, Goodman and Fitzgibbon; by request of Attorney General.

Brief Summary of Bill

- Prohibits a person from initiating or assisting with a telephone solicitation or a commercial solicitation using an automatic dialing and announcing device to any: (1) telephone number with a Washington area code; (2) telephone number registered to a Washington resident; or (3) telephone number with a Washington area code or registered to a Washington resident on the do not call list.
- Makes a violation of the Telephone Solicitation Act (TSA) and a violation of the prohibition on using an automatic dialing and announcing device to make a commercial solicitation violations of the Consumer Protection Act.
- Adds that a person injured by a commercial solicitation by an automatic dialing and announcing device may bring civil action to enjoin further violations and recover actual damages or \$1,000 per violation, whichever is greater.
- Modifies and adds definitions to the TSA, the Commercial Telephone Solicitation Regulation Act, and the automatic dialing and commercial solicitation statute.

Hearing Date: 1/10/23

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Background:

Telephone solicitation is primarily regulated by two statutes: the Telephone Solicitation Act of 1986 (TSA) and the Commercial Telephone Solicitation Regulation Act of 1989 (CTSRA). These acts contain both similar and distinct provisions. In addition, automatic dialing and commercial solicitation is regulated under telecommunications.

	Telephone Solicitation Act	Commercial Telephone Solicitation Regulation Act	Automatic Dialing and Commercial Solicitation
Scope and Exceptions	<p>The TSA defines "telephone solicitation" as the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a person and conversation for the purpose of encouraging the person to purchase property, goods, or services or soliciting donations of money, property, goods, or services.</p> <p>"Telephone solicitation" does not include</p> <ul style="list-style-type: none"> • calls made in response to a request or inquiry by the called party; • calls made by a not-for-profit organization to its own list of bona fide or active members of the organization; • calls limited to 	<p>The CTSRA defines "commercial telephone solicitation" as:</p> <ul style="list-style-type: none"> • an unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services; • other communication with a person where: (1) a free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; (2) a telephone call response is invited; and (3) the salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or • other communication with a person which 	<p>An "automatic dialing and announcing device" is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.</p> <p>"Commercial solicitation" is the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.</p>

	<p>polling or soliciting the expression of ideas, opinions, or votes; or</p> <ul style="list-style-type: none"> • business-to-business contacts. <p>The TSA does not cover calls from political parties.</p>	<p>misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.</p> <p>"Commercial telephone solicitor" means any person who engages in commercial telephone solicitation, including service bureaus.</p> <p>However, many specific industries and activities are exempted by the CTSRA, such as isolated solicitations; calls by charities and collection agencies; and the sale of certain products, like cable television, fish, etc. One specific exemption is for people engaging in commercial telephone solicitation where less than 60 percent of such person's prior year's sales are as a result of the commercial telephone solicitation.</p>	
<p>Prohibition</p>	<p>There are time restrictions and regulations around identification requirements, and when a recipient of the solicitation must be removed from call lists, but there is no prohibition on</p>	<p>There are time restrictions and regulations around identification requirements, and when a recipient of the solicitation must be removed from call lists, but there is no prohibition on commercial telephone solicitations.</p>	<p>A person may not use an automatic dialing and announcing device for purposes of commercial solicitation intended to be received by telephone customers within Washington.</p>

	commercial telephone solicitations.		
Fines and Civil Penalties	Violations of the call time restrictions or identification and opt-out, call termination, or list removal requirements are subject to a \$1,000 fine for each violation under the TSA.	A civil penalty of \$500 to \$2,000 shall be imposed by the court for each violation.	Damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are presumed to be \$500.
Private Civil Actions	Individuals subject to repeated violations may bring a civil action to enjoin violations and recover damages, including at least \$100 per violation. A prevailing plaintiff is entitled to attorney's fees and costs.	A person who is injured by a violation may bring an action for recovery of actual damages, attorney's fees, and costs. A violation is an unfair or deceptive act in trade or commerce for the purposes of the Consumer Protection Act.	A violation is a violation of the Consumer Protection Act.

Summary of Bill:

Automatic Dialing and Commercial Solicitation.

Definitions.

The definition of "automatic dialing and announcing device" is modified to mean an automated system for the dialing of a telephone number and the transmission of a voice communication.

In addition, the following definitions are added:

- "Voice communication" means any communication, in whole or in part, by means of an artificial or prerecorded message, and includes, without limitation, any voice message transmitted directly to a recipient's voicemail, regardless of whether the recipient's phone rings as part of the transmission. Automated warnings required by law, without more, do not turn a communication into a voice communication.
- "Established business relationship" means an existing relationship formed by a voluntary two-way communication between a person or entity and a business, with or without an exchange of consideration, on the basis of an application, purchase, or transaction regarding property, goods, or services offered by the business or entity, which relationship has not been previously terminated by either party.
- "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.
- "Personally identifying information" means an individual's: (1) social security number; (2)

driver's license number; (3) bank account number; (4) credit or debit card number; (5) personal identification number; (6) automated or electronic signature; (7) unique biometric data; (8) account passwords; or (9) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.

- "Assist in the transmission" means actions taken by a person to provide substantial assistance or support, which enables any person to originate, initiate, or transmit a commercial solicitation when the person providing the assistance knows or avoids knowing that the initiator of the commercial solicitation is engaged, or intends to engage, in any practice is a violation. This does not include activities of: (1) any entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent regulations; (2) a telecommunications provider or other entity that are limited to providing access to the internet for purposes excluding initiation of a voice communication; or (3) a terminating provider relating to the completion of a voice communication.
- "Terminating provider" means a telecommunications provider upon whose network a voice communication terminates.

Prohibition.

No person may initiate, or assist in the transmission of, a commercial solicitation using an automatic dialing and announcing device to any telephone number with a Washington area code or to a telephone registered to a Washington resident. No person may initiate, or assist in the transmission of, a commercial solicitation using an automatic dialing and announcing device to any telephone number with a Washington area code or to a telephone registered to a Washington resident on the do not call registry.

Private Civil Actions and Penalties.

A commercial solicitation violation is considered a *per se* violation of the Consumer Protection Act (CPA), and a person injured by such violations may receive remedies under the CPA. In addition, the person may bring civil action to enjoin further violations and recover actual damages or \$1,000 per violation, whichever is greater.

Telephone Solicitation Act.

Definitions.

"Telephone solicitation" means the initiation of a telephone call by a commercial or nonprofit company or organization to a person for the purpose of encouraging the person to purchase property, goods, services, personally identifying information, or anything of value, or services; or soliciting donations of money, property, goods, services, personally identifying information, or anything of value.

Prohibition.

No person may initiate, or cause to be initiated, a telephone solicitation to any telephone number with a Washington area code or to a telephone registered to a Washington resident on the do not call registry. There is a rebuttable presumption that a telephone solicitation to a telephone number with a Washington area code is presumed to be received by a Washington resident.

Private Civil Actions.

A violation of the TSA is made a *per se* violation of the CPA.

Commercial Telephone Solicitation Regulation Act.

Definitions.

"Commercial telephone solicitation" means an unsolicited telephone call to a person for the purpose of inducing the person to purchase or invest in property, goods, or services, or obtaining personally identifying information or anything of value. References to salesperson are removed. In addition, the exemption that a person who had less than 60 percent of their prior year's sales made as a result of commercial telephone solicitation is removed, and such person is now considered a commercial telephone solicitor.

The following definitions are added:

- "Personally identifying information" means an individual's: (1) social security number; (2) driver's license number; (3) bank account number; (4) credit or debit card number; (5) personal identification number; (6) automated or electronic signature; (7) unique biometric data; (8) account passwords; or (9) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.
- "Telephone call" includes any communication made through a telephone that uses a live person, artificial voice, or prerecorded message.
- "Unsolicited" means to initiate contact for the purpose of attempting to sell a person property, goods, or services, or obtain personally identifying information or anything of value, where such person provided no previous express interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold.

Appropriation: None.

Fiscal Note: Requested on January 9, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.